

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KENNY CARTER,

Petitioner,

v.

ORDER
05-CV-147S

SUPERINTENDENT LAKEVIEW
CORRECTIONAL FACILITY,

Respondent.

1. On March 3, 2005, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. On December 29, 2005, Judge Schroeder filed a Report and Recommendation recommending that Respondent's Motion to Dismiss be granted and that Petitioner's Petition for Writ of Habeas Corpus be dismissed without prejudice based on his failure to exhaust his state remedies. This Court accepted Judge Schroeder's Report and Recommendation over Petitioner's Objections on March 8, 2006.

2. After several Motions for Reconsideration were filed by Petitioner and resolved by this Court, Petitioner filed a Notice of Appeal and Motion for a Certificate of Appealability and to Proceed on Appeal *In Forma Pauperis*.

IT HEREBY IS ORDERED, that because the issues raised in the Petition are not the type of issues that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, this Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly, a Certificate of Appealability is DENIED.

FURTHER, that a Certificate of Appealability shall not issue.

FURTHER, that this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal would not be taken in good faith.

FURTHER, that Petitioner's Motion for a Certificate of Appealability and to Proceed on Appeal *In Forma Pauperis* (Docket No. 30) is DENIED.

SO ORDERED.

Dated: December 5, 2006
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge